

REMARKS

By this response, the specification is amended to clarify the definition of computer-readable media. The specification defines computer-readable media as encompassing recordable type media and transmission type media. Recordable type media is defined only to include statutory subject matter, whereas transmission type media is defined to include signals. This was the intended definition of computer-readable media when the application was filed. However, the examiner is rejecting the claims arguing that the definition of recordable type media is not limited to statutory subject matter. His rationale is that "the broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the ordinary and customary meaning of computer readable media."

Applicant agrees with the examiner's argument that the general definition of a computer-readable medium would include signals inasmuch as there is little difference between a signal carrying computer executable instructions and a disk carrying the same for patent purposes. However, Applicant submits that this argument does not apply in this application. The claims are not directed to a computer readable medium. They are directed to a recordable type medium which is not a term that is commonly used. A recordable type medium is specifically defined in the specification as a subtype of computer readable media that includes the types of computer-readable media that are statutory. This is the reason for sub-dividing computer readable media into two groups. On the other hand, transmission type media are specifically intended to cover signals (i.e. communication links). It would be unreasonable to argue that recordable type media would encompass signals when a separate category of computer readable media is explicitly defined as including them.

Even if it is argued that a recordable type media is commonly understood to encompass signals, such an argument would be moot in this case. The amendments to the specification clearly exclude signals from the scope of recordable type media, and clearly emphasize that they fall under transmission type media. Accordingly, because claim 14 is directed to a recordable type media, as opposed to a computer-readable media or a transmission type media, Applicant

submits that the claim only covers statutory subject matter as defined in paragraph 33 of the specification. Applicant therefore requests that the rejection be withdrawn.¹

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 13th day of May, 2010.

Respectfully submitted,

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¹ It is noted that the examiner has suggested the inclusion of the phrase non-transitory in the claims. Applicant does not wish to use this term because it is indefinite. For example, what does it mean to be non-transitory? It could easily be argued that RAM, which loses its data the instant it loses power, is transitory and therefore would be excluded from the scope of a "non-transitory" claim even though it is well established that RAM which stores functional descriptive material is statutory. Applicant understands that the real intention behind the office's suggestion for including non-transitory is to exclude signals. However, Applicant submits that the route proposed by this response is much better because it stays within the definitions of the specification and excludes signals in a far clearer way than by using the term non-transitory.